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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/514,431	11/16/2004	Hirotaka Tohara	2004 1723A-	1050
513	7590	04/28/2005	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021				DOSTER GREENE, DINNATIA JO
ART UNIT		PAPER NUMBER		
3743				

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/514,431	TOHARA, HIROTAKA	
	Examiner	Art Unit	
	Dinnatia Doster-Greene	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11/16/04, and 1/12/05.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input checked="" type="checkbox"/> Other: <u>Detail Action</u> . |

DETAILED ACTION***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 2/4 are rejected under 35 U.S.C. 102(b) as being anticipated by Kiyoshi Uematsu (Japanese Utility Application No. 125767/1984). Uematsu discloses a nose mask (Figs. 1-3) characterized in that an arrangement axle (1) is inserted from nares into a nasal vestibule, a plurality of mask portions (2) are selectively fitted on a tip of the arrangement axle, and one mask portion is fitted by being selected from the group of a mask portion for a water performance, a mask portion for filtering pollen, dust, and malodor, and a mask portion for medical treatment of a nose (pages 1-4).

Regarding claim 2, Uematsu discloses wherein the mask portions are configured to have an axle to arrange a cellulose sponge (2) and filters (3) alternately.

Regarding claim 4, Uematsu discloses wherein the mask portion fitted on the tip of the arrangement axle inserted from the nares into the nasal vestibule, any one of mask portions can be fitted by being selected from the group of a

cellulose sponge mask portion, a filter mask portion, and a fiber mask portion
(pages 1-4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amezcuia (U.S. Patent No. 4,221,217) in view of Uematsu. Amezcuia discloses the claimed invention with the exception of a cellulose sponge. However, Uematsu, which also relates to a nose filter device, discloses that a sponge may be inserted within a nasal device. Thus, it would have been obvious to one skilled in the art to substitute the absorbent charcoal layer 24 with the sponge of Uematsu for the purpose of alleviating hay fever by preventing pollen from entering the user's nostrils.

Regarding claim 3, Amezcuia discloses wherein the cellulose sponge and the filters are alternately arranged on the tip of the arrangement axle in the configuration of the mask portions, the cellulose sponge and the filters are alternately inserted into an axle provided on a cap having an axle hole in its center, a stopper is inserted into said axle, an axle tip and the stopper are coupled and formed in the claw-shaped, thereby the cellulose sponge and the filters are fixed on the axle provided on the cap, the tip of the arrangement is formed in the claw-shaped and coupled with a claw provided on the cap so that the mask portion is fitted and firmly fixed on the arrangement axle (cols. 4-5; Figs. 5-10).

Regarding claim 4, Uematsu discloses wherein the mask portion fitted on the tip of the arrangement axle inserted from the nares into the nasal vestibule, any one of mask portions can be fitted by being selected from the group of a cellulose sponge mask portion, a filter mask portion, and a fiber mask portion (pages 1-4).

Regarding claim 5, Amezcuia discloses wherein a nose stopper is fitted on the tip of the arrangement axle instead of the mask portion (Figs. 5-10).

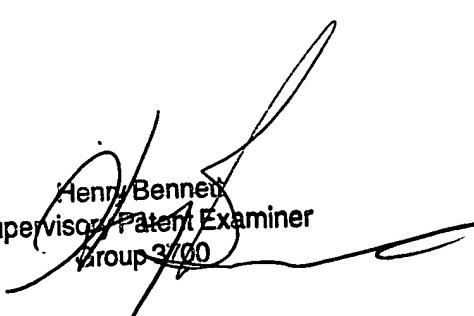
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinnatia Doster-Greene whose telephone number is 571-272-7143. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-271-7143.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ddg


Henry Bennett
Supervisory Patent Examiner
Group 3700